

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Re SPRING FORD INDUSTRIES, : CIVIL ACTION
INC. :
 :
SPRING FORD INDUSTRIES, INC., :
Plaintiff/Appellee :
 :
v. :
 :
NIKE TEAM SPORTS, INC., :
Defendant/Appellant : NO. 05-3788

MEMORANDUM AND ORDER

McLaughlin, J.

March 21, 2006

Prior to filing for bankruptcy, the Debtor, Spring Ford Industries, Inc. ("Spring Ford"), manufactured and supplied apparel to Nike Team Sports, Inc. ("NTS"). NTS appeals from the Bankruptcy Court's decision that it owes Spring Ford \$147,554.06 in payments that it wrongfully withheld as chargebacks.¹ NTS argues that it was entitled to take the chargebacks under a contract that Nike, Inc. and Spring Ford Knitting Mills entered into in 1984 ("the 1984 Contract").² Spring Ford argues that the 1984 Contract does not apply to NTS because NTS was not a

¹ "Chargeback" is a term of art used in the industry to refer to a buyer's reduction of the amount it owes to a supplier, which the buyer takes as a penalty for the supplier's failings. (Bankr. Ct's 3/11/04 Order at 3 n. 2.)

² NTS became a subsidiary of Nike, Inc. in 1993. Spring Ford is the successor in interest to Spring Ford Knitting Mills.

subsidiary of Nike, Inc. at the time the contract was executed and/or because subsequent events amended or terminated the contract.

In deciding against NTS, the Bankruptcy Court held that the 1984 Contract did not apply to "future" subsidiaries, that is, to entities that became subsidiaries after the contract was executed. The Court finds that the 1984 Contract unambiguously applied to future as well as present subsidiaries. Therefore, the Court will vacate the order of the Bankruptcy Court and remand the case for the Bankruptcy Court to determine (1) whether subsequent agreements or the course of dealings between the parties amended or superceded the 1984 Contract, or whether Spring Ford otherwise lawfully rejected the contract, and (2) if the 1984 Contract governed the relationship between NTS and Spring Ford, whether NTS properly took the disputed chargebacks under that contract.

I. Facts and Procedural History

The following facts were stipulated to or established at trial. Spring Ford was a textile manufacturer and distributor. On October 1, 1984, Spring Ford entered into an Apparel Supply Agreement with Nike, Inc. Under the 1984 Contract, Spring Ford agreed to manufacture and sell private brand apparel to "NIKE" (defined as "NIKE, Inc. and its

subsidiaries") pursuant to orders received from "NIKE." If Spring Ford shipped an order more than 14 days late, the 1984 Contract allowed "NIKE" to reject or to accept the order at 66% of the regular price. In other words, the 1984 Contract allowed "NIKE" to take a chargeback of 34%. (Pretrial Stm't at 2; Mt'n for Summ. J., Ex. C (1984 Contract) at 1-2, 5.)³

Nike, Inc. acquired NTS as a subsidiary in 1993. Spring Ford began doing business with NTS in 1999. The parties' business practice was that NTS would submit purchase orders to Spring Ford, and Spring Ford would bill NTS by invoices that referenced the NTS purchase order numbers. The purchase orders contained the statement "Purchase Order subject to terms and conditions." The Bankruptcy Court found, and the parties do not dispute, that Spring Ford and NTS never entered into a written contract and never made reference to the 1984 Contract in the course of their dealings until the instant dispute arose. (Bankr. Ct.'s 6/17/05 Mem. Op. at 3-4.)

Spring Ford filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code on April 2, 2002. NTS took the chargebacks in dispute after Spring Ford had filed for bankruptcy and had shipped all the orders that NTS

³ The 1984 Contract appears in the record on appeal only as Exhibit C of NTS's Motion for Summary Judgment, but it was admitted into evidence at trial as Plaintiff's Exhibit-2. Trial Tr. at 188.

had placed. NTS had never taken any chargebacks from Spring Ford prior to this time. (Bankr. Ct.'s 6/17/05 Mem. Op. at 2; Trial Tr. at 69-70.)

Spring Ford initiated this adversary proceeding against NTS on March 17, 2003, alleging that NTS had improperly withheld \$154,905.93 in payments. NTS moved for summary judgment on the ground that the 1984 Contract authorized it to withhold the monies as chargebacks. The Bankruptcy Court denied NTS's motion. The Bankruptcy Court ruled that NTS had not established that the 1984 Contract governed the relationship between Spring Ford and NTS, or shown which chargebacks it took pursuant to the 1984 Contract. (Compl.; Mt'n for Summ. J.; Bankr. Ct.'s 3/11/04 Order at 3-4.)

After trial, the Bankruptcy Court ruled in favor of Spring Ford. The Bankruptcy Court found that the 1984 Contract unambiguously applied only to subsidiaries that Nike, Inc. owned at the time it entered into the contract. Because Nike, Inc. did not acquire NTS as a subsidiary until 1993, the Bankruptcy Court held that NTS was not entitled to take the chargebacks. The Bankruptcy Court entered judgment against NTS in the amount of \$147,554.06.⁴ (Bankr. Ct.'s 6/17/05 Mem. Op. at 3, 7, 10.)

⁴ Spring Ford conceded at trial that two of the chargebacks, totalling \$7351.88, were proper. The Bankruptcy Court reduced Spring Ford's claim accordingly. (Trial Tr. at 164; Bankr. Ct.'s 6/17/05 Mem. Op. at 4 and n. 8.)

II. Jurisdiction and Standard of Review

This Court has appellate jurisdiction pursuant to 28 U.S.C. § 158(a) (2005).

In reviewing a bankruptcy court's decision on a motion for summary judgment, a district court assesses the record using the same summary judgment standard that guides the bankruptcy court. See Rivas v. City of Passaic, 365 F.3d 181, 193 (3d Cir. 2004). Summary judgment is appropriate if the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Id.

In reviewing a bankruptcy court's decision after trial, a district court reviews the bankruptcy court's findings of fact under the "clearly erroneous" standard and its legal conclusions under a plenary, or "de novo," standard. IRS v. Pransky, 318 F.3d 536, 542 (3d Cir. 2003).

III. Analysis

Under the 1984 Contract, Spring Ford agreed to supply NIKE with apparel for an indefinite term. As noted above, the contract allowed NIKE to take a 34% chargeback on late shipments. (Mt'n for Summ. J. at Ex. C (1984 Contract) at 5, 12.) The first two questions that NTS raises on appeal are 1) whether the Bankruptcy Court erred in denying summary judgment to NTS, and 2) whether the Bankruptcy Court erred by ruling after trial that the

1984 Contract was unambiguous, and did not apply to NTS as a matter of law. The question presented is whether the term "subsidiaries" as used in the 1984 Contract encompassed future, as well as present, subsidiaries.

The 1984 Contract provisions in dispute are:

1. DEFINITIONS - As used herein:
 - A. "NIKE" means NIKE, Inc. and its subsidiaries.
 . . .
19. PARTIES BOUND - This Agreement shall be binding upon and inure to the benefit of each party's respective officers, directors, agents, employees, parent, subsidiaries, joint venturers, purchasers, successors and assigns.

(Mt'n for Summ. J. at Ex. C (1984 Contract) at 1, 13.)

The parties agree that the 1984 Contract is governed by Oregon law. To interpret a contract provision under Oregon law, a court must begin by examining the text of the disputed provision, in the context of the document as a whole. Yogman v. Parrott, 937 P.2d 1019, 1021 (Ore. 1997), citing Eagle Industries, Inc. v. Thompson, 900 P.2d 475, 478-479 (Ore. 1995) ("[T]he court looks at the four corners of a written contract, and considers the contract as a whole with emphasis on the provision or provisions in question."). At this stage, the interpretation of a contract is a question of law. Timberline Equipment Co. v. St. Paul Fire and Marine Ins. Co., 576 P.2d 1244, 1246 (Ore. 1978). If the meaning of the provision is clear, the analysis ends here. Yogman, 937 P.2d at 1021.

The meaning of a provision is clear when, in context, it can only have one reasonable interpretation. Id. at 1022, quoting Pacific First Bank v. New Morgan Park Corp., 876 P.2d 761, 764 (Ore. 1994) ("Words or terms of a contract are ambiguous when they reasonably can, in context, be given more than one meaning.").

In the context of the 1984 Contract as a whole, the only reasonable meaning of the term "subsidiaries" encompasses future as well as present subsidiaries. In addition to setting forth the parties' obligations with regard to supply, delivery, and payment, the 1984 Contract gave Spring Ford a right to use the NIKE trademark and included provisions that protected NIKE's intellectual property. Spring Ford agreed to keep NIKE's apparel designs confidential, and to use NIKE trademarks on only those goods it produced for NIKE. (Mt'n for Summ. J. at Ex. C (1984 Contract) at 2-3, 10.)

If the term "subsidiaries" did not include future subsidiaries, the parties would have to negotiate a new contract every time either of them acquired a new subsidiary and wished to do business with it. Otherwise, for example, Spring Ford would not be able to use NIKE trademarks on apparel that it produced for new subsidiaries of Nike, Inc. without being in breach of the 1984 Contract.

Moreover, if "subsidiaries" meant only present subsidiaries, Paragraph Nineteen of the contract logically would be limited to the parties' present "officers, directors, agents, employees, parent . . . joint venturers, purchasers, successors and assigns" as well. That would mean that the contract would bind some of the parties' officers, directors, agents, and employees, but not others, depending solely on when they joined the company. To avoid such a result, the parties would have to renegotiate the contract every time either of them hired a new employee or worked with a new agent. In light of the long-term nature of the 1984 Contract, it is not reasonable to interpret it as binding only the entities and persons that existed at the time it was executed.

The Bankruptcy Court noted that the parties could have easily added in the phrase "present and future" if they intended to include future subsidiaries. While that is true, the parties did not include such a phrase before any of the terms in the contract. Yet it would not be reasonable to interpret these terms as being limited to the conditions that existed when the contract was executed in 1984.

For example, Paragraph Six of the contract provides that Spring Ford must sell apparel to NIKE under "prices, terms and conditions" that are as good or better than those "offered to any other person or company." Mt'n for Summ. J. at Ex. C (1984

Contract) at 3.) If those phrases were interpreted to mean the prices, terms, and conditions that Spring Ford offered to other buyers at the time it entered into the contract, Spring Ford would be forced to sell at 1984 prices in perpetuity.

The Bankruptcy Court relied on the dictionary definition of the term "subsidiary" in ruling that the 1984 Contract applied only to present subsidiaries. Specifically, the Bankruptcy Court relied on the dictionary's use of the word "is," the present tense of the verb "be," to hold that the term "subsidiary" must also be in the present tense. Bankr. Ct.'s 6/17/05 Mem. Op. at 6, citing Black's Law Dictionary at 1428 (6th ed. 1990) (defining subsidiary corporation as one "that is run and owned by another company which is called the 'parent.'").

Under Oregon law, courts may use dictionary definitions to determine what a term means. See Yogman, 937 P.2d at 1021; Westar Electric Co. v. Westar Acquisition Corp., 33 P.3d 718, 722 (Ore. App. 2001). In this case, however, the dictionary definition of "subsidiary" is not helpful because the question presented is not what the term means, but whether the contract extends to future entities.

Nouns, in and of themselves, do not include a temporal aspect. For example, the dictionary definition of a successor corporation is one that "is vested with the rights and duties of an earlier corporation." Black's Law Dictionary at 1473 (8th ed.

2004) (emphasis added). Similarly, the definition of an assignee is "one to whom property, rights or powers are transferred by another." Id. at 127 (emphasis added). Based on these dictionary definitions, the 1984 Contract would only apply to successors and assigns that were in existence at the time the parties executed the contract. Yet reason suggests that the parties meant for the contract to apply to any successors and assigns they might have in the future. Returning to the term "subsidiaries," the fact that the parties used the same sentence to bind their subsidiaries and successors and assigns in Paragraph Nineteen further indicates the parties' intent for the 1984 Contract to apply to any subsidiaries they might have in the future as well.

Because the only reasonable interpretation of the term "subsidiaries" encompasses future as well as present subsidiaries, the Court finds that the 1984 Contract unambiguously extends to future subsidiaries. The Bankruptcy Court erred in ruling after trial that the 1984 contract did not extend to future subsidiaries. The Bankruptcy Court erred at the summary judgment stage to the extent that NTS requested, and the Bankruptcy Court denied, partial summary judgment on the issue of whether the 1984 Contract extended to future subsidiaries.⁵

⁵ In its motion for summary judgment, NTS requested judgment as a matter of law on all counts of the complaint. In its appeal brief, NTS stated that the first question on appeal

Because the Court is remanding the case for further proceedings, the Court will not reach the other questions that NTS raises on appeal.

An appropriate Order follows.

was whether the Bankruptcy Court erred in denying summary judgment where NTS had "established" that it had taken the chargebacks pursuant to the 1984 Contract. At oral argument, however, NTS limited the question to whether the Bankruptcy Court erred in not granting partial summary judgment on issue of whether the 1984 Contract unambiguously extended to future subsidiaries. (Compare Mt'n for Summ. J. and Appellant's Br. at 1 with Oral Arg. Tr. 15).

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Defendant/Appellant	:	NO. 05-3788

ORDER

AND NOW, this 21st day of March, 2006, upon consideration of Nike Team Sport's appeal from the Bankruptcy Court's Order of June 17, 2005 (Docket No. 1), the parties' briefs, and following oral argument on January 20, 2006, IT IS HEREBY ORDERED that the Bankruptcy Court's Order is VACATED for the reasons stated in the Court's memorandum of today's date. The case is remanded to the Bankruptcy Court for further proceedings consistent with this Order.

BY THE COURT:

/s/ Mary A. McLaughlin
MARY A. McLAUGHLIN, J.